

United States
Circuit Court of Appeals⁹
For the Ninth Circuit.

FONG YOU TUN and FONG YOU FOOK,
Appellants,
vs.

JOHN D. NAGLE, as Commissioner of Immigra-
tion for the Port of San Francisco,
Appellee.

Transcript of Record.

Upon Appeal from the Southern Division of the
United States District Court for the
Northern District of California,
First Division.

FILED

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F. O. MONTGOMERY

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Circuit Court of Appeals
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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Names of Attorneys of Record.

For Petitioner and Appellant:

DION R. HOLM, Esq., San Francisco, Cal.

For Respondent and Appellee:

UNITED STATES ATTORNEY, San Francisco, Cal.

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 17,789.

In the Matter of the Application of FONG YOUTUN for a Writ of Habeas Corpus for and on Behalf of His Brother, FONG YOOK.

Praeipice for Transcript of Record.

To the Clerk of the Above-entitled Court:

Sir: Please issue certified copies of the following proceedings:

1. Petition for writ of habeas corpus.
2. Order to show cause.
3. Demurrer.
4. Order sustaining demurrer denying petition and discharging order to show cause.
5. Notice of appeal.
6. Petition for appeal.
7. Order allowing appeal.
8. Assignment of errors.

9. Stipulation as to exhibits and order confirming stipulation.
10. Praecipe for appeal and all minute orders of court, except those of postponement.
11. Citation on appeal, original and copy.

Dated May 8, 1923.

DION R. HOLM,
Attorney for Appellant.

[Endorsed]: Receipt of a copy of the within praecipe for transcript of record is hereby admitted this 8th day of May, 1923.

J. T. WILLIAMS,
United States District Attorney.

Filed May 8, 1923. Walter B. Maling, Clerk.
By C. W. Calbreath, Deputy Clerk. [1*]

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

No. 17,789.

In the Matter of the Application of FONG YOU TUN for a Writ of Habeas Corpus for and on Behalf of His Brother, FONG YOU FOOK.

Petition for Writ of Habeas Corpus.

The petition of Fong You Tun respectfully shows:

I.

Your petitioner is a person residing at San

*Page-number appearing at foot of page of original certified Transcript of Record.

Francisco, State of California, and is the brother of Fong You Fook. Petitioner applies for a writ of habeas corpus for and on behalf of his brother, Fong You Fook, who is unable to apply by reason of his unlawful detention, imprisonment, and restraint by the United States Commissioner of Immigration at Angel Island, California.

II.

Fong You Fook is unlawfully imprisoned, detained, confined and restrained of his liberty by John D. Nagle, Commissioner of Immigration, who is the person who has the care, custody, and control of the body of the said Fong You Fook at the United States Immigration Station at Angel Island, California, in this Northern District of California, and the said Fong You Fook is to be deported therefrom to China.

III.

Fong You Fook was born in China and accompanied petitioner and another brother, named Fong You Mon, from China to the United States, Ex S. S. "China," arriving at the port of San [2] Francisco, October 12, 1922. Thereafter the Commission of Immigration directed that the testimony of petitioner, of Fong You Mon and Fong You Fook be taken down in shorthand and transcribed, as well as the testimony of all other witnesses introduced in behalf of petitioner and his brothers, to show the relationship existing between petitioner, his two brothers and their father, as well as to show the status of the father, to wit, that of a lawfully domiciled merchant. After considering the testimony introduced in behalf of the said Fong

You Fook, Fong You Mon and petitioner, the Commissioner of Immigration admitted the mercantile status of the father of petitioner and his brothers, but denied petitioner and his two brothers the right to enter the United States. From this decision an appeal was taken to the Secretary of Labor, who, on the 6th day of March, 1923, dismissed the appeals taken in behalf of Fong You Mon and Fong You Fook, and sustained the appeal taken in behalf of your petitioner, directing that petitioner be released from custody and permitted to enter the United States as the son of a lawfully domiciled merchant. Fong You Fook and Fong You Mon were ordered deported to China.

IV.

Petitioner being advised that his brother Fong You Mon had not met the burden of proof placed upon him by the laws governing the admission of Chinese into the United States, in that the said Fong You Mon failed to testify, for reasons unknown to petitioner, in accordance with the facts concerning the relationship between the said Fong You Mon and his father, petitioner does not pray for a writ of habeas corpus on behalf of the said Fong You Mon.

V.

The illegality of the imprisonment, detention, confinement and restraint of liberty of Fong You Fook consists in the following: [3]

The Commissioner of Immigration and Secretary of Labor misconstrued and failed to properly interpret, in accordance with the decisions governing the admission of Chinese into the United States and

the laws, rules and treaties concerning the immigration of Chinese to the United States, as in force and effect, concerning the burden of proof required of the said Fong You Fook.

VI.

That the hearing accorded Fong You Fook before the Commissioner of Immigration at Angel Island and the Secretary of Labor was unfair in this:

That there was no evidence introduced by the Commissioner of Immigration or the Secretary of Labor disproving the relationship existing between Fong You Fook and his father, and that the Secretary of Labor admitted petitioner to the United States on the identical testimony adduced in behalf of Fong You Fook, whom the said Secretary of Labor excluded.

VII.

Your petitioner is informed and believes that the said Secretary of Labor, through inadvertence or mistake, excluded the said Fong You Fook, and that the said Secretary of Labor, by his order of deportation intended that the said Fong You Fook and your petitioner should be landed, but that Fong You Mon, who had failed to meet the requirements as hereinabove specified, should be excluded.

VIII.

Your petitioner is informed that all of the records and testimony pertaining to the application of Fong You Fook for admission to the United States are in Washington, D. C., under the control of the Secretary of Labor. Your petitioner is without copies of the said records or testimony, and is unable to attach copies of the same to this petition,

but prays leave of [4] this Court when the said testimony and records are available, that your petitioner may affix the same to this petition, and that they be considered part of this petition, and further prays leave to amend this petition in accordance with any facts that may be discovered from the said record.

WHEREFORE your petitioner prays that a writ of habeas corpus be issued by this Honorable Court, directing and commanding John D. Nagle, Commissioner of Immigration at the Port of San Francisco, to have and produce the body of Fong You Fook before this Honorable Court at the Post Office Building, in the City and County of San Francisco, State of California, on a day, and at a time certain, to be fixed by this Court, or to show cause, if any he has, why a writ of habeas corpus should not be granted, in order that the alleged illegal cause of imprisonment and detention of the said Fong You Fook may be examined into so that if it be determined the said detention and imprisonment is unlawful and illegal and that the hearing accorded Fong You Fook was unfair, that the said Fong You Fook may be discharged and permitted to enter the United States. That a copy of this petition be served together with a copy of the order as prayed for, on the Commissioner of Immigration at Angel Island, California.

(Chinese Signature),
Petitioner.

DION R. HOLM,

Attorney for Petitioner. [5]

State of California,
City and County of San Francisco,—ss.

Fong You Tun, being first duly sworn, deposes and says: That he is the petitioner named in the foregoing petition; that he has had the same read and explained to him and that he knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein alleged on his information and belief, and as to those matters, he believes them to be true.

FONG (Chinese Signature) YOU TUN.

Subscribed and sworn to before me this 12 day of March, 1923.

[Seal] THOMAS S. BURRET,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed Mar. 12, 1923. W. B. Maling,
Clerk. By C. M. Taylor, Deputy Clerk. [6]

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

No. 17,789.

In the Matter of the Application of FONG YOU TUN for a Writ of Habeas Corpus for and on Behalf of His Brother, FONG YOU FOOK.

Order to Show Cause.

GOOD CAUSE APPEARING THEREFOR, and upon reading the verified petition on file herein;

IT IS HEREBY ORDERED that John D. Nagle, United States Commissioner of Immigration at Angel Island, California, appear before this Court on the 26th day of March, 1923, at the hour of 10:00 o'clock A. M. of said day to show cause, if any he has, why a writ of habeas corpus should not be issued herein, as prayed for, and that a copy of this order, together with a copy of said petition for writ be served upon the said *Commission* of Immigration; and

IT IS FURTHER ORDERED that the said John D. Nagle, Commissioner of Immigration, aforesaid, or whoever acting under the orders of said Commissioner of the Secretary of Labor, shall have the custody of Fong You Fook, is hereby ordered and directed to retain the said Fong You Fook within the custody of the said Commissioner of Immigration, and within the jurisdiction of this Court, until further order herein.

Dated: March 12th, 1923.

R. S. BEAN,

Judge of the United States District Court.

[Endorsed]: Filed Mar. 12, 1923. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [7]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 17,789.

In the Matter of FONG YOU FOOK, on Habeas Corpus.

Demurrer to Petition for Writ of Habeas Corpus.

Comes now the respondent, John D. Nagle, Commissioner of Immigration, at the port of San Francisco, in the Southern Division of the Northern District of California, and demurs to the petition for a writ of habeas corpus in the above-entitled cause and for grounds of demurrer alleges:

I.

That the said petition does not state facts sufficient to entitle petitioner to the issuance of a writ of habeas corpus, or for any relief thereon.

II.

That said petition is insufficient in that the statements therein relative to the record of the testimony taken on the trial of the said applicant are conclusions of law and not statements of the ultimate facts.

WHEREFORE, respondent prays that the writ of habeas corpus be denied.

JOHN T. WILLIAMS,
United States Attorney,

Asst. United States Attorney,
Attorneys for Respondent.

[Endorsed]: Filed Apr. 23, 1923. Walter B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk.
[8]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Monday, the 23d day of April, in the year of our Lord, one thousand nine hundred and twenty-three—Present: The Honorable JOHN S. PARTRIDGE, District Judge.

No. 17,789.

In the Matter of FONG YOU WOOK, on Habeas Corpus.

Minutes of Court—April 23, 1923—Order Sustaining Demurrer, etc.

This matter came on regularly for hearing on order to show cause as to the issuance of a writ of habeas corpus herein. D. R. Holm, Esq., was present as attorney for petitioner and detained. P. A. Robbins, Esq., was present as attorney for respondent, and filed demurrer to petition, and all parties consenting thereto, it is ordered that the Immigration Records be filed as Respondent's Exhibits "A," "B," "C" and "D" and that the same be considered as part of original petition. After argument by the respective attorneys, the Court ordered that said matter be and the same is hereby submitted and, after due consideration

had thereon, further ordered that said demurrer be and the same is hereby sustained and said petition for writ of habeas corpus denied. [9]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 17,789.

In the Matter of the Application of FONG YOUN TUN for a Writ of Habeas Corpus for and on Behalf of His Brother, FONG YOUN FOOK.

Notice of Appeal.

To the Clerk of the Above-entitled Court and the Honorable JOHN T. WILLIAMS, United States Attorney for the Northern District of California:

YOU AND EACH OF YOU will please take notice that Fong You Fook, the detained herein, by Fong You Tun, his brother, the petitioner herein, do hereby appeal to the Circuit Court of Appeals of the United States for the Ninth Circuit from the order made and entered herein on the 23d day of April, 1923, sustaining the demurrer, discharging the order to show cause, and denying the petition for a writ of habeas corpus filed herein.

Dated: San Francisco, Calif., May 8, 1923.

DION R. HOLM,

Attorney for Petitioner and Detained, Appellants
Herein.

Receipt of a copy of the within notice of appeal is hereby admitted this 8th day of May, 1923.

J. T. WILLIAMS,

United States District Attorney.

[Endorsed]: Filed May 8, 1923. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.

[10]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 17,789.

In the Matter of the Application of FONG YOU TUN for a Writ of Habeas Corpus for and on Behalf of His Brother, FONG YOU FOOK.

Petition for Appeal

Comes now Fong You Fook, the detained, by Fong You Tun, the petitioner, who are the appellants herein, and alleges that:

I.

On the 23d day of April, 1923, the above-entitled Court made and entered its order denying the petition for a writ of habeas corpus as prayed for and filed herein, sustaining a demurrer to the said petition, and discharging an order to show cause, in which said order of Court certain errors are made to the prejudice of the appellants, all of which will more fully appear from the assignment of errors filed herein.

WHEREFORE these appellants pray that an appeal may be granted in their behalf to the Circuit Court of Appeals of the United States for the Ninth Circuit, for the correction of the errors so complained of, and further that the transcript of the record, proceedings and papers in the above-entitled cause, as shown by the praecipe may be sent and transmitted to the Circuit Court of Appeals for the Ninth Circuit, under the rule of the said Court in accordance with the law in such case, made and provided, and that all further proceedings in this matter be stayed until the final determination of said appeal.

DION R. HOLM,
Attorney for Petitioner, Detained and Appellants.

[11]

Receipt of a copy of the within petition for appeal is hereby admitted this 8th day of May, 1923.

J. T. WILLIAMS,
United States District Attorney.

[Endorsed]: Filed May 8, 1923. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.

[12]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 17,789.

In the Matter of the Application of FONG YOU TUN for a Writ of Habeas Corpus for and on Behalf of His Brother, FONG YOU FOOK.

Assignment of Errors.

Now comes Fong You Fook, the detained herein, by Fong You Tun, his brother, the petitioner herein, both of whom are appellants herein, by their attorney, Dion R. Holm, and file the following assignment of errors upon which they will rely in the prosecution of their appeal in the above-entitled cause in the United States Circuit Court of Appeals for the Ninth Circuit from the order and judgment made by this Honorable Court on the 23d day of April, A. D. 1923:

I.

The Court erred in denying the petition for a writ of habeas corpus.

II.

The Court erred in sustaining the demurrer to the petition for a writ of habeas corpus.

III.

The Court erred in discharging the order to show cause why a writ of habeas corpus should not issue.

IV.

The Court erred in holding the Commissioner of Immigration and Secretary of Labor properly construed and interpreted the decisions and the laws, rules and treaties concerning the admission of Chinese into the United States, in [13] respect to the burden of proof required of the said Fong You Fook.

V.

The Court erred in holding the Commissioner of Immigration and Secretary of Labor accorded Fong You Fook a fair hearing and did not exclude him without due process of law when the said Fong You Fook was denied permission to enter the United States on the same testimony that Fong You Tun, a brother of the said Fong You Fook was permitted to enter the United States.

VI.

The Court erred in finding the Secretary of Labor did not, through inadvertence or mistake, exclude the said Fong You Fook.

WHEREFORE, because of the manifest errors permitted by the said Court, the appellants, through their attorney, pray the said judgment sustaining the demurrer to the petition for a writ of habeas corpus, discharging the order to show cause, and denying the writ of habeas corpus be reversed, and for such other and further relief as the Court may deem meet and proper.

Dated: May 8, 1923.

DION R. HOLM,
Attorney for Appellants.

Receipt of a copy of the within assignment of errors is hereby admitted this 8th day of May, 1923.

J. T. WILLIAMS,
United States District Attorney.

[Endorsed]: Filed May 8, 1923. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [14]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 17,789.

In the Matter of the Application of FONG YOU TUN for a Writ of Habeas Corpus for and on Behalf of His Brother, FONG YOU FOOK.

Order Allowing Appeal.

On motion of Dion R. Holm, attorney for Fong You Tun, the brother and petitioner in the above-entitled cause, and for Fong You Fook, the applicant,—

IT IS HEREBY ORDERED that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from an order and judgment heretofore made and entered herein, sustaining the demurrer to the petition for a writ of habeas corpus, discharging the order to show cause, and denying the petition for a writ of habeas corpus

be, and the same is, hereby allowed, and that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings be forthwith transmitted to the United States Circuit Court of Appeals for the Ninth Circuit in the manner and time prescribed by law, and that meanwhile all further proceedings in this court and by the United States immigration authorities be suspended, stayed and superseded until the determination of this appeal, and that the said Fong You Fook be retained within the custody of this court and in this district until the said appeal has been determined.

Dated: May 8, 1923,

JOHN S. PARTRIDGE,

Judge of the District Court of the United States.

[15]

Receipt of a copy of the within order allowing appeal is hereby admitted this 8th day of May, 1923.

J. T. WILLIAMS,

United States District Attorney.

[Endorsed]: Filed May 8, 1923. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [16]

In the Southern Division of the United States District Court in and for the Northern District of California, First Division.

No. 17,789.

In the Matter of the Application of FONG YOU TUN for a Writ of Habeas Corpus for and on Behalf of His Brother FONG YOU FOOK.

Stipulation and Order Directing the Transmission of Original Exhibits to Appellate Court.

IT IS HEREBY STIPULATED AND AGREED by and between the respective parties in the above-entitled cause that the original records of the United States Bureau of Immigration which were filed in the above-entitled court as respondent's exhibits may be transferred in their original form and without being transcribed to the United States Circuit Court of Appeals for the Ninth Circuit and the same is and may there be considered part of the record in determining this cause on appeal to the said United States Circuit Court of Appeals for the Ninth Circuit without objection on the part of either of said respective parties;

AND IT IS FURTHER STIPULATED the appeal taken in this matter may be placed on the current calendar of the said United States Circuit Court of Appeals and considered as submitted as of June 5, 1923.

Dated May 3, 1923.

JOHN T. WILLIAMS,
United States District Attorney.

ALMA M. MEYERS,
Asst. United States District Attorney.

DION R. HOLM,
Attorney for Appellants.

IT IS HEREBY ORDERED that the terms of
the above stipulation be complied with.

JOHN S. PARTRIDGE,
Judge of the United States District Court. [17]

Receipt of a copy of the within — is hereby
admitted this 8th day of May, 1923.

J. T. WILLIAMS,
U. S. Atty.,
Attorney for Respondents.

[Endorsed]: Filed May 11, 1923. Walter B.
Maling, Clerk. By C. W. Calbreath, Deputy
Clerk. [18]

**Certificate of Clerk U. S. District Court to Tran-
script on Appeal.**

I, Walter B. Maling, Clerk of the United States
District Court, for the Northern District of Cali-
fornia, do hereby certify that the foregoing 18
pages, numbered from 1 to 18, inclusive, contain a
full, true and correct transcript of certain records
and proceedings, in the matter of Fong You Fook,
on habeas corpus, No. 17,789, as the same now
remain on file and of record in this office; said
transcript having been prepared pursuant to and

in accordance with the praecipe for transcript on appeal (copy of which is embodied herein) and the instructions of the attorney for appellant herein.

I further certify that the cost for preparing and certifying the foregoing transcript on appeal is the sum of six dollars and eighty-five cents (\$6.85), and that the same has been paid to me by the attorney for appellant herein.

Annexed hereto is the original citation on appeal issued herein (page 20).

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of said District Court this 24th day of May, A. D. 1923.

[Seal]

WALTER B. MALING,
Clerk.

By C. M. Taylor,
Deputy Clerk. [19]

Citation on Appeal.

UNITED STATES OF AMERICA,—ss.

The President of the United States, to JOHN D. NAGLE, Commissioner of Immigration for the Port of San Francisco, and to JOHN T. WILLIAMS, Esq., United States District Attorney, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California,

within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's Office of the United States District Court for the Northern District of California, Southern Division, wherein Fong You Tun and Fong You Fook are appellants and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable JOHN S. PARTRIDGE, United States District Judge for the Northern District of California, this 21st day of May, A. D. 1923.

JOHN S. PARTRIDGE,
United States District Judge.

[Endorsed]: No. 17,789. United States District Court for the Northern District of California. Fong You Tun and Fong You Fook, Appellants, vs. John D. Nagle, Commissioner of Immigration. Citation on Appeal. Filed May 22, 1923. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.

Service of the within citation by copy admitted this 22d day of May, 1923.

JOHN T. WILLIAMS,
ALMA M. MEYERS,
Attorneys for Appellee. [20]

[Endorsed]: No. 4039. United States Circuit Court of Appeals for the Ninth Circuit. Fong You Tun and Fong You Fook, Appellants, vs. John D. Nagle, as Commissioner of Immigration for the Port of San Francisco, Appellee. Transcript of Record. Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, First Division. Filed May 24, 1923.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.